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For the past ten years, and with the support of several foundations, including the 3. **Roderick** MacArthur Foundation, the Edna McConnell Clark Foundation, the Rockefeller Foundation, and the Open Society Institute, I, in association with other colleagues, have been investigating and analyzing organ donation practices, with particular emphasis on the issues of the sale of organs and the use of organs from executed prisoners. Among the publications ~~that~~ present the consensus that I and my colleagues have reached on these issues are: “The **Bellagio** Task Force Report on Transplantation, Bodily Integrity, and the International **Traffic** in Organs,” D. J. **Rothman**, Eric Rose, et al., authors, **Transplantation Proceedings**, **29** (1997), pp. **2739-2745**; David J. **Rothman**, The International Organ **Traffic**, **New York Review Of Books**, March 26, 1998, pp. 14-17; and David J. **Rothman**, Body Shop, **The Sciences**, November/December 1997, pp. 17-21. The conclusions presented below are fully documented in these publications.

without previously obtaining their consent or giving them the opportunity to refuse."

The WMA condemned this practice and called upon national medical associations to "severely discipline the physicians involved." So too, the June 1977 Protocol One Additional to the Geneva Conventions of 1974-1977, bans **the** use of organs **from** prisoners of war. "The physical or mental **health** and integrity of persons who are in the power of the adverse Party.. **shall** not be endangered by any unjustified act,.. It is prohibited to subject the persons described.. to any medical procedure which is not indicated by the state of health of the person concerned." Specifically, the Protocol declares: "It is, in particular, prohibited to carry out on such persons, even with their consent.. removal of tissue or organs for **transplantation**."2

II. Despite denials, there is no doubt Chinese transplantation practices rely on organs from executed prisoners.

Although Chinese officials continue to deny that executed prisoners are the major source for their organ transplantation practices, there is no question but *that* Chinese transplantation facilities rely upon these very organs.

The history of the use of organs **from** executed prisoners begins in the mid-1980s. Like many other developing countries, China eagerly adopted the western technology of transplantation once **cyclosporine** came onto the market and reduced, albeit did not eliminate, the problem of organ rejection. Its physicians mastered the

procedure, often by undertaking a surgery fellowship in the United States, and then implemented programs, particularly in kidney transplantation. Indeed, for China the timing of **cyclosporine's** appearance was especially fortuitous, for by the **mid-1980s**, the extraordinary havoc that the Cultural Revolution had caused in medicine was dissipating and surgeons were now returning to the universities from their exile in the countryside.

How can we be certain about the practices followed in China? First, in **1984**, immediately after the demonstrated efficacy and availability of cyclosporine, China enacted “Rules Concerning the Utilization of Corpses or Organs from the Corpses of Executed Prisoners” The law, brought to public attention by Robin Munro of **Human Rights Watch/Asia**, provides that corpses or organs of executed prisons could be harvested if no one claimed the body, if the executed prisoner volunteered to have his corpse so used, or if **the** family consented. In the latter case, officials were to discuss “the scope of the use of the corpse, method and cost of disposition after use, and financial compensation.” The 1984 law then stipulates:

The use of the corpses or organs of executed criminals must be kept strictly secret, and attention must be paid to avoiding negative repercussions.. . **A surgical** vehicle from the health department may be permitted to drive onto the execution grounds to remove the organs, but it is not permitted to use a vehicle bearing health department insignia or to wear white clothing. Guards must remain posted around the execution grounds while the operation for organ removals is going on.

executing prisoners by a bullet to the brain. contains no articles on enhancing the supply of organs-- an omission that would be baffling were it not for the prisoner supply of organs. All the while, Hong Kong and Taiwanese physicians have reported on caring for patients who have traveled to China to obtain an organ

The full extent of the practice cannot be known because China classifies the number of prisoners executed and does not release the number of transplantations carried out. Amnesty International estimates that in 1996 alone no less than 4,367 executions took place and the number may be even higher. Many of the people executed were petty criminals who in the United States would have received less drastic sentences. With organs so readily available and travel to China from surrounding countries relatively simple, Human Rights Watch estimates that more than 2,000 organs, most of them kidneys, are transplanted in China each year; according to the Worldwide Transplant Center Directory, based at the University of California, Los Angeles, the Chinese have reported performing 6,900 kidney transplants in the three year period 1994-1996-- and that that number is a vast under- representation. ³

III. The claim that Chinese prisoners give informed consent to the use of their organs is not to be credited.

The critical fact that must be appreciated is that Confucian and Buddhist concepts insist on the bodily integrity of the corpse until the moment of cremation; prevailing attitudes about the respect due elders also deters organ removal.

In much of Asia, conceptions of ~~the~~ respect due elders has practically eliminated organ transplantation. Japan, for example, despite a readiness to embrace new technology and to celebrate gift-giving, has only a minuscule program, devoted almost exclusively to transplanting kidneys from living related donors. And the same attitudes hold in China as well. As the anthropologist Margaret Lock has explained: “The idea of having a deceased relative whose body is not complete prior to burial or cremation is associated with **misfortune**, because in this situation **suffering** in the other world never **terminates**.”⁴ Moreover, for the **traditional-**minded, death does not take place at a specific moment. The process of dying, which involves not only heart and brain but soul, is not complete until services have been held on the seventh and forty-ninth days. It takes even longer to convert a deceased relative into an ancestor, all of which makes tampering with the body for the sake of transplantation unacceptable.

so too, many Asian countries, including China, do not legally recognize the standard of brain death. As a result, **cadaveric** donation is a rarity in Hong Kong, Japan, Singapore, and Korea, Hong Kong, for example, does about 55 kidney transplants a year (with organs donated by living relatives), and has a waiting list of some 600.

It should also be noted that conditions on death row, particularly in China, subvert any claim that meaningful informed consent has been obtained. The covert character of the activities belies the first defense of the procedure, that the voluntary consent of the prisoner is obtained. The notion that someone on death row can give **meaningful** consent to a procedure-- **particularly** when death row is a miserable hovel in a local jail and the prisoner is kept shackled-- is in itself very **difficult** to accept; add to that the exceptional secrecy that envelops the process, and the claims for consent become still more problematic. Were consent meaningful, there would be no need to set forth elaborate procedures in the 1984 Chinese law for concealment or to exempt minorities from the law.

IV. The use of organs from executed prisoners subverts the ethical integrity of the medical profession.

Although reliable eyewitness accounts are not available, the execution process and retrieval procedures in China may well duplicate those followed in

Taiwan between 1987 and 1994 (when the practice was abolished). In both cases, execution is by gunshot and the need to protect and preserve the organ, critical.

Immediately before the execution, the physician sedates and intubates the prisoner and inserts an intravenous catheter prior to execution. The prisoner is then executed with a bullet to the head; the physician stems the blood flow, puts the prisoner on the respirator, and injects drugs to raise blood pressure and cardiac output. With the organs thus maintained, the body is transported a nearby hospital where the recipient is waiting and the surgery is performed. The physicians have become intimate participants in the execution process, functioning not to preserve life but to manipulate death in the service of transplantation? In using organs from executed prisoners, there is no avoiding this compromise of medical ethics and violation of ancient axioms to do no harm, However acute the need for organs, physicians should not be turned into executioners, and hospitals, into execution chambers.

V. It is the widespread Asian cultural antipathy to organ donation that gives Chinese hospitals their opportunities to profit.

To the extent that Chinese hospitals can obtain organs from executed prisoners, they can tap into a lucrative market fed by almost insatiable demand. Desperate patients in neighboring Asian counties who would otherwise have to wait years for a transplant, will eagerly travel to China to undergo the procedure.

Indeed, the pricing of transplant procedures make the trip still more attractive. The cost of a kidney transplant in Chinese hospitals is considerably below that of western medical centers (usually between \$15,000 and \$25,000, not \$40,000 to \$100,000.) At the same time, insurance companies in Hong Kong and Taiwan, who will not pay for obtaining operation in China, readily cover post-operative care. Their reasoning is strictly financial: the costs of post-operative care are much lower than the annual costs of dialysis.

VI. Conclusion.

China does not have strong national medical associations capable of drawing attention to the ethical problems involved in harvesting organs from executed prisoners. Chinese medical organizations are too weak and frail to stand out against state directives. Indeed, there is no formal licensure of physicians in China so that the profession cannot set standards for medical training and conduct. Chinese leaders refuse to tolerate the strong institutions that are vital to a civil society, precisely because these groups might promulgate and defend ethical codes that challenge state ideology and authority. As it now stands, the ethics of medicine, whether the issue is transplantation or eugenics, set no limits on state authority.